

The transfer of tangible personal property results in Service Occupation Tax liability rather than Retailers' Occupation Tax liability where the purchaser employs the seller primarily for its engineering skill to design and produce the property on special order, where the property has use or value only for the specific purpose for which it was produced and where the property has use or value only to the purchaser. See 86 Ill. Adm. Code 130.2115. (This is a GIL).

April 21, 2000

Dear Xxxxx:

This letter is in response to your letter dated March 22, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We respectfully request a General Information Letter pursuant to 2 Ill. Admin. Code Section 1200.120 regarding the taxability of the wall panels and roof and floor trusses manufactured and sold by our clients. The paragraphs below completely discuss the specific facts and legal authorities. There are no audits or litigation cases pending with respect to this request. To the best of the knowledge of both our clients and our office the Department has not previously ruled on the same or a similar issue for our clients or predecessors. Neither our clients nor our office previously submitted the same or a similar issue to the Department but withdrew it before a letter ruling was issued. We thank you in advance for your prompt attention to this matter.

### **Facts**

Our clients manufacture and sell customized wall panels and roof and floor trusses to carpet contractors, general contractors, homebuilders and the general public. Our clients do not install the customized panels and trusses. Our clients' customers employ architects and/or building designers to prepare blueprints which contain the necessary information to construct a building. Our clients use the blueprints along with sophisticated computer software programs to prepare their own drawings that show the materials, dimensions and the method of manufacturing necessary to provide the exact products their customers' desire. Our clients obtain customer approvals for shop drawings. Also, at the request of local building authorities, our clients often obtain a structural engineer's seal for their truss drawings. Our clients' fully approved shop drawings are then used to guide our clients' employees to cut the proper material grade and length to exact size and manufacture and assemble the panels and trusses.

Our clients' costs of materials range from 40% to 46% of the total costs to design and manufacture the customized panels and trusses. It would be very unusual for our clients to manufacture more than fifty identical panels or trusses as each building is

customized and very rarely alike. All unused panels and trusses produced by our clients have no resale value and, if returned by their customers, are scrapped. Our clients also occasionally sell a few items at retail and for resale (e.g., plywood and other non-manufactured products). For these sales our clients either obtain resale certificates or collect and remit Retailers' Occupation Tax.

### **Legal Authorities**

We believe that our clients' wall panel and roof and floor truss businesses should be taxed under the Service Occupation Tax Act. The Department's Regulation 86 Ill. Admin. Code Section 130.2115 provides that sellers of machinery, tools, dies, jigs, patterns, gauges and the like are subject to Service Occupation Tax rather than Retailers' Occupation Tax if the following conditions are satisfied: (1) the purchaser employs the seller primarily for his engineering or other scientific skill to design and produce the property on special order for the purchaser and to meet the particular needs of the purchaser, (2) the property has use or value only for the specific purpose for which it is produced, and (3) the property has use or value only to the purchaser. The Department's Regulation also provides that if the above conditions are satisfied, a single order or simultaneous orders by the same customer for less than fifty identical items will be subject to the Service Occupation Tax. The Department's letter rulings 97-0016 (PLR) and 84-0020 also support our belief that our clients' wall panel and roof and floor truss businesses should be taxed under the Service Occupation Tax Act (copy of 97-0016 (PLR) enclosed for your convenience).

Our clients' customers employ our clients because of their skill and ability to design and produce particular housing components (wall panels and roof and floor trusses) for particular homes. Our clients manufacture customized panels and trusses for the specific needs of a particular purchaser, and all of their products have no other value to any other purchaser. Our clients do not manufacture stock or standard trusses. Therefore, we believe that our clients' panel and truss businesses should be taxed under the Service Occupation Tax Act.

### **Request for Ruling**

Based on the facts and legal authorities contained in this request, we respectfully request that the Department issue a General Information Letter indicating that our clients' wall panel and roof and floor truss businesses are subject to the Service Occupation Tax Act.

Thank you again for your prompt attention to this matter. Please call the undersigned at ##### if you have any questions or need any additional information. Also, please call the undersigned prior to issuing a letter that does not indicate that our clients' wall panel and roof and floor truss businesses are subject to the Service Occupation Tax Act.

The issue of whether a person incurs a Retailers' Occupation Tax or Service Occupation Tax liability depends upon the nature of the items being produced and the nature of the design work involved. If the item being produced is substantially similar to stock or standard items, even though custom-made, the sale of that item would result in Retailers' Occupation Tax liability. Examples of such items are tailor-made clothing and draperies, etc. The test for special order items that result in Service Occupation Tax liability is set forth in subsection (b) of the enclosed copy of 86 Ill. Adm. Code 130.2115.

The seller of a special machine, tool, die, jig, pattern, gauge or other similar item is engaged primarily in a service occupation, rather than in the business of selling tangible personal property, and so does not incur Retailers' Occupation Tax liability with respect to the sale, if the following tests for exemption are all met in the transaction:

- A) The purchaser employs the seller primarily for his engineering or other scientific skill to design and produce the property on special order for the purchaser and to meet the particular needs of the purchaser;
- B) the property has use or value only for the specific purpose for which it is produced; and
- C) the property has use or value only to the purchaser. 86 Ill. Adm. Code 130.2115(b).

If a manufacturer of customized wall panels and roof and floor trusses is employed to provide engineering or other scientific skill to design and produce the customized wall panels and roof and floor trusses on special order for the purchaser in order to meet the particular needs of the purchaser, and those wall panels and roof and floor trusses have no value to others than the purchaser for the purpose for which they are produced, then the manufacturer will incur Service Occupation Tax liability on the sale of those customized wall panels and roof and floor trusses, rather than Retailers' Occupation Tax liability.

As to the requirement that the seller be employed primarily for his engineering or other scientific skill to design and produce the property, it is sufficient if the seller is responsible for making a substantial contribution to the designing of the property that is to be produced on special order. See subsection (b)(2) of Section 130.2115. A manufacturer who takes a customer's blueprints and uses specialized computer software to prepare its own drawings that set out the materials, dimensions, and the method of manufacture necessary to create customized wall panels and roof and floor trusses and then uses those drawings to manufacture the customized wall panels and roof and floor trusses is generally responsible for making a substantial contribution to the designing of the property that is to be produced on special order as long as the manufacturer is contractually responsible for the engineering of those panels and trusses. This is not affected by the fact that the manufacturer may subcontract out the engineering work to another as long as the manufacturer is contractually responsible for the engineering work.

Please note that if such a manufacturer constructs and sells 50 or more identical trusses or wall panels in a single order or in multiple orders, those sales will be deemed to be volume production and will be subject to Retailers' Occupation Tax (rather than Service Occupation Tax) liability based

April 21, 2000

on the total amount received by the manufacturer from such volume production multiple order or orders. See subsection (a)(4) of Section 130.2115.

If a manufacturer also makes retail sales of tangible personal property, such as plywood and other non-manufactured products, that manufacturer will incur Retailers' Occupation Tax liability on those sales.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Terry D. Charlton  
Associate Counsel

TDC:msk  
Enc.